

VZCZCXRO8921  
PP RUEHRG  
DE RUEHBR #1188/01 1651347  
ZNR UUUUU ZZH  
P 141347Z JUN 06  
FM AMEMBASSY BRASILIA  
TO RUEHC/SECSTATE WASHDC PRIORITY 5767  
INFO RUEHRI/AMCONSUL RIO DE JANEIRO 2279  
RUEHSO/AMCONSUL SAO PAULO 7196  
RUEHRG/AMCONSUL RECIFE 4965  
RUEHBU/AMEMBASSY BUENOS AIRES 4086  
RUEHAC/AMEMBASSY ASUNCION 5497  
RUEHMN/AMEMBASSY MONTEVIDEO 6315  
RUEATRS/DEPT OF TREASURY WASHINGTON DC  
RHEHNSC/NSC WASHDC  
RUCPDO/USDOC WASHDC

UNCLAS SECTION 01 OF 02 BRASILIA 001188

SIPDIS

STATE PASS USTR -- SULLIVAN  
NSC FOR FEARS  
AID FOR LAC  
TREASURY FOR OASIA - DAS LEE AND DDOUGLASS  
USDOC FOR 4332/ITA/MAC/WH/OLAC/JANDERSEN/ADRISCOLL/MWAR D  
USDOC FOR 3134/ITA/USCS/OIO/WH/RD/SHUPKA  
USPTO FOR PINKOS

SENSITIVE  
SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [BR](#)

SUBJECT: U.S.-Brazil IPR Discussions at the Bilateral Commercial Dialogue

¶1. (SBU) Summary. On June 6, Secretary Gutierrez inaugurated in Rio de Janeiro the bilateral U.S.-Brazil Commercial Dialogue (septel). At that event, US Patent and Trademark Office (USPTO) Deputy Steven Pinkos conducted an IPR Breakout session with officials from INPI (Brazil's Patent Institute) and the Ministry of Development, Industry, and Commerce. During that upbeat hour-long session, INPI President Roberto Jaguaribe briefed USG officials on INPI's hiring initiative, its efforts to reduce the long patent/trademark backlog, and ongoing plans for training. In addition to Jaguaribe, the Brazilian delegation consisted of Marcio Heidi Suguieda (Trade Advisor to the Ministry of Development, Industry, and Commerce), Carlos Pazos (INPI Director of Patents), Leopoldo Coutinho (INPI Coordinator for International Cooperation, and Marcus Vinicius Dudkiewicz (Dep. Coordinator for International Cooperation). Steve Pinkos (Deputy Director USPTO), Dorian Mazurkevich (slated to become the USPTO attache in Sao Paulo), Rio de Janeiro Consul General, AmEmbassy Brasilia Econ Counselor, Rio de Janeiro FCS Commercial Assistant Patrick Levy, represented the USG. End Summary.

¶2. (SBU) In the June 6 meeting, Jaguaribe made the following points:

-- Hiring. INPI has made good progress in hiring new examiners. 105 of 350 new patent examiners are on board as well as 45 of 104 planned new trademark examiners. The entry process has been tortuous as INPI has had to get Executive and Congressional approval to create the positions and Finance Ministry and Planning Ministry approval to fill them and pay employee salaries. While the number of examiners is increasing, keeping INPI at full staff is difficult as employees constantly depart the agency for higher-paying job in either the private sector or other government ministries.

-- Training. The new patent hires will be divided into two groups, with training of the first set to take place in August and the second in November. On trademark, the new examiners will begin training in June. Scheduling training has been problematic as it takes skilled examiners away from the patent/trademark examination process. The EU, Germany, and England are lending a hand in the training process as Brazilian patent doctrine is modeled more along European lines than the US model. INPI expects to host ten trainers

from Europe who will stay in Brazil for 6 months. In addition, INPI would welcome training TDYs from USPTO experts, for a minimum of two weeks (but preferably longer) in duration.

-- Trademark Backlog. The backlog stands at 600,000 or 6 years (as INPI receives 100,000 applications a year). Currently, INPI has the capacity to deal with a backlog of about 150,000, so Jaguaribe has put extraordinary procedures in place.

-- Paperless Processing. Jaguaribe's solution has been to simplify trademark examinations through paperless processing. This increases the risk of mistakes (and lawsuits) though he termed the results "quite adequate." Substantively, paperless processing means that INPI no longer checks the reliability of a petitioner's powers of attorney and whether a company is active in the area in which it seeks the trademark -- both legal requirements

-- Initial Pilot Program. Under the initial paperless pilot program, 30 of INPI's best examiners multiplied their trademark processing productivity 10-fold. This cohort has closed 70,000 cases so far this year -- with 300,000 expected to be closed by year's end. Paperless processing is not appropriate for cases where a party has opposed a trademark application, Jaguaribe stated, as these cases (18% of the total, or about 120,000) are more complex. Of the 480,000 unopposed cases, INPI estimates that about 240,000 are likely no longer of interest to the petitioner given the extended period of time during which these applications have remained pending. So after it has fully implemented paperless processing (in June/July 2006), INPI plans to contact applicants to find out if they want to proceed with their trademark petition.

-- Outlook on Trademarks. While he acknowledged that there may be some legal problems associated with this approach, Jaguaribe

BRASILIA 00001188 002 OF 002

indicated that he planned to face them when the time came. He forecast that by November 2006, INPI would be dealing with trademark applications filed this year. Overall, Jaguaribe opined that 9 months was the floor under which INPI would not be able to further reduce the backlog.

-- Patent Backlog. The backlog on patents currently stands at 130,000; in 80,000 cases petitioners have requested an exam but INPI has not yet been able to look at their applications. Presently, INPI has the capacity to close 13,000 to 14,000 cases per year, though as the agency gets new examiners on board this total should rise to 25,000 in 2007, 36,000 in 2008, and 40,000 in 2009. Given its efforts to increase its corps of examiners, INPI anticipates that it will be able to reduce the patent backlog to 40,000 within 3 years. Average waiting time for a patent is currently 5 years, although in some areas it is higher (6 years in metallurgical cases and 10 years for electronic cases). Given legal requirements and legislatively mandated review periods, it will be difficult for INPI to drop below a 4 year waiting time.

-- Shortage of Qualified Patent Examiners. INPI believes that in key fields it needs to increase its stable of qualified examiners. For instances, in the electronics field, it needs to increase from 8 examiners to 70; in the telecom area it has two qualified examiners and in physics it has no one. Jaguaribe reiterated his request for USG TDY training, specifically to help in those areas where INPI expertise was wanting (i.e., electronics, telecom, physics as well as nanotechnology, chemical, and biotech).

13. (SBU) USPTO Deputy Director Pinkos noted that his agency had recently established a Global Intellectual Property Institute whose mission was to train foreign government officials on all aspects of IPR, including patent/trademark administration and enforcement. Hiring was a challenge as well for USPTO, he added, though that agency had experienced a great deal of success in augmenting its workforce by increasing opportunities for telecommuting. Pinkos stated that USPTO would soon have an attache posted at the U.S. Consulate in Sao Paulo who would serve as an in-country liaison on the full range of IPR issues, including technical assistance and law enforcement training.

14. (SBU) This cable was cleared by USPTO prior to transmission.

Chicola